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October 31, 2018

By Electronic Filing in ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184;
Schools and Libraries Universal Support Mechanism, CC Docket No. 02-6**

Dear Ms. Dortch,

Through this letter, the Office of the Governor of the State of Illinois and the Illinois Department of Innovation and Technology (“DoIT”), an Illinois State agency, respectfully seek a permanent lift of the suspension or, in the alternative, an extension of the suspension of the E-rate amortization policy in the *Second Modernization Order*¹ for an additional four years. In connection with infrastructure deployment projects funded under the Commission’s Schools and Libraries Universal Service Support Mechanism (“E-rate”), that Order suspended the Commission’s amortization policy, which otherwise would require amortization of special construction (upfront, nonrecurring) costs over at least three years for projects with such costs in excess of \$500,000. The suspension permits all of these costs to be paid in the first year of the project, but the suspension is set to expire on June 30, 2019.² The *Second Modernization Order* also specifically allowed state funding to be used for the applicants’ non-discounted portion of special construction projects, in conjunction with an Administrator’s match not to exceed ten percent (10%). Twenty-two (22) states provide eligible funding for special construction projects, including Illinois.³

¹ *Modernizing the E-rate Program for Schools and Libraries*, W.C. Docket No. 13-184, Second Report and Order and Order on Reconsideration, FCC 14-189, 29 FCC Rcd 15538, ¶¶ 16-21 (2014) (“*Second Modernization Order*”).

² *Id.* at ¶¶ 55-59.

³ See <https://www.usac.org/sl/applicants/beforeyoubegin/state-matching-provision.aspx> (last visited October 25, 2018).



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The State of Illinois has appropriated \$700,000 for Fiscal Year 2018 (July 1, 2017-June 30, 2018) and an additional \$16.3 million for Fiscal Year 2019 (July 1, 2018-June 30, 2019) in funding for the build out of high speed special construction infrastructure projects⁴ envisioned in the *Second Modernization Order*. That \$16.3 million, in particular, has been appropriated from the School Infrastructure Fund to the Illinois State Board of Education (“ISBE”) to help school districts achieve sufficient per student broadband capability pursuant to FCC requirements by the beginning of the 2020-21 school year. Priority will be given to school districts that currently do not have high speed Internet access. In addition, the majority of the appropriation only allows state match funding for special construction projects after USAC has approved funding, which likely will not be until September 2019 or later. ISBE will be accepting applications for state match to take advantage of the Administrator’s match for Funding Year (FY) 2019 with a deadline in January 2019.

The State of Illinois applauded the Commission’s *Second Modernization Order*, because it would allow for “efficient investment in high-speed broadband infrastructure, including the deployment of fiber”⁵ to assist schools and libraries in achieving connectivity requirements. The Illinois General Assembly followed suit in working on legislation that would provide state funding for these special construction projects. Legislation was finally passed to support ISBE in providing for state match in funding these projects for Fiscal Years 2018 and 2019. The \$16.3M appropriation is set to also expire on June 30, 2019, the same time as the suspension of the amortization policy. Illinois is committed to extending this appropriation to allow for FY2019 E-rate applicants to take advantage of the state funding and Administrator’s match.

The school districts most in need, along with others, have not been able to apply for special construction projects. *First*, many of the schools awaited much needed state funding. This has been an issue particularly in Illinois, which, for the majority of the time period for which the suspension has been in effect, faced a budget impasse unprecedented in the state’s history. That

⁴ Illinois General Assembly, Pub. Act 100-0586, Art. 24, § 40 (appropriating \$700,000 for “all costs associated with [school] District Broadband Expansion”) and Article 162, § 145 (appropriating \$16,300,000 for “school district broadband expansion with the goal that all school districts achieve broadband capability by the beginning of the 2020-2021 school year” and providing that the “funds shall be distributed to school districts that have been approved for broadband expansion funding under the federal Universal Service Program for Schools and Libraries, with school districts without high speed Internet access receiving priority with respect to the distribution of those funds”).

⁵ *Second Modernization Order* at ¶ 17.



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budget impasse left the state without a complete state budget for Fiscal Years 2016 and 2017, leaving the state uniquely unable to avail itself of the benefits of the Commission's suspension of the amortization policy.

Second, schools cautiously moved forward awaiting further clarification of the fiber program rules from both the FCC and USAC. It has taken several years for USAC to work through many of the issues on these fiber projects. Clearer guidance on special construction fiber projects, including funding for dark fiber and self-provisioned networks has emerged gradually through a combination of industry experience and USAC training only within the past year.

Third, the delay in the USAC funding of these projects was of serious concern to many school districts, because issuing and planning for such buildouts is an arduous task that requires a significant commitment of staff resources. Now, with funding in place to take advantage of this very important Commission initiative, we are on the brink of a setback if the extension of the suspension is not granted.

Failure to extend the suspension of the amortization policy will have a chilling effect on further construction of high speed networks to school districts most in need throughout the State of Illinois. For example, if the amortization policy were to be reinstated for FY2019, Illinois school districts, including 77 rural school districts, most of which must rely on DSL or cable modem, would be limited to special construction charges of up to \$500K. This limitation could restrict buildout, especially to the rural school districts. While the State has appropriated substantial funding for the current fiscal year, without a further extension of the suspension of the amortization policy there can be no assurances that it will be re-appropriated or supplemented in future years.

In addition, the Commission also mandated that any school building that received matching funds would be ineligible to receive additional matching funds for a period of fifteen (15) years. Specifically, the Commission stated "to prevent excessive or duplicative funding during a high-speed broadband connection's useful life, any school or library connection that is built with matching funds will be ineligible to receive additional matching funds for special construction to the same buildings from the E-rate program for 15 years.⁶ In essence, if this extension of the suspension is not granted, school districts will not only be limited to \$500K in special construction

⁶ *Id.* at ¶ 59.



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costs, a sum that may not prove adequate, but would also be prohibited from seeking further matching funds for 15 years.

The Commission need not be concerned that support for special construction under E-rate will be used to overbuild or otherwise duplicate Connect America Fund (“CAF”) support. *First*, to the extent that CAF support permits delivery of broadband service to schools or libraries, the Commission’s rules already require recipients to respond to posted Form 470 requests for service by offering eligible schools and libraries broadband service at rates reasonably comparable to those charged to schools and libraries in urban areas for similar services.⁷ In a CAF-eligible area, therefore, broadband services that CAF support has made available must be offered to the local schools and libraries, and are virtually certain to be considered more cost effective than special construction.

Second, the mere fact that a school or library is located in an area for which a service provider is receiving CAF support does not mean that it will necessarily gain access to new broadband options or services. CAF Phase II requires only that the recipient connect a prescribed number of customer locations within the census blocks associated with the award of support. This does not mean that all customers within those census blocks will be served, if the CAF recipient can reach the required number of customer locations by deploying new broadband facilities only to a portion of the eligible census blocks.⁸

Thus, even in areas covered by an award of CAF support, however, not all schools and libraries may be passed by broadband-capable facilities. CAF support, including CAF Phase II and the recent CAF auction, is focused on deployment of voice and broadband service to unserved residential and small business locations that will seek mass market, consumer-grade broadband

⁷ *Second Modernization Order* at ¶¶ 60-63.

⁸ *E.g.*, *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (“*Transformation Order*”), at ¶ 171, n.279 (requiring carriers accepting CAF Phase II support to deploy voice and broadband to locations unserved by an unsubsidized competitor so that the “total number of locations covered is greater than or equal to the number of locations in the eligible census blocks”); *Connect America Fund*, WC Docket No. 10-90, Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 16-33, 31 FCC Rcd 3087 (2016) at ¶ 20 (adopting a “voluntary path for rate-of-return carriers to elect to receive model-based support in exchange for deploying broadband-capable networks to a pre-determined number of eligible locations”).



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services.⁹ While in many cases, new broadband facilities constructed to meet this obligation may pass schools, libraries, or other anchor institutions, there is no explicit requirement for CAF recipients to do so. Some special construction may still be required to connect schools and libraries to CAF-supported networks, and CAF recipients remain free to impose on E-rate recipients the charges associated with such work.¹⁰

Third, there is no assurance that a CAF-supported network would support the bandwidth needed by the school or library, even if it passed it directly. This is particularly the case because the obligations associated with CAF support (and CAF Phase II support in particular) start at a minimum speed of 10 Mbps downstream and 1 Mbps upstream. This speed compares unfavorably with the Commission's target of "at least 100 Mbps per 1,000 students and staff (users) in the short term and 1 Gbps Internet access per 1,000 users in the longer term."¹¹ While the winning bidders in the recently completed CAF auction generally committed to deploy service at speeds higher than 10/1, only 19 percent of the homes and small business locations where support was awarded are covered by a winning bidder that will deploy service of 1 Gbps or above.¹² Moreover, CAF support awarded in Auction 903 covers a ten-year term that is only just beginning.¹³ The Commission should not require America's students to wait until that buildout is complete, particularly when so

⁹ *E.g., Connect America Fund*, WC Docket No. 10-90, Public Notice, "Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations," DA 16-1363, 31 FCC Rcd 12900 (Wir. Comp. Bur. 2016), at 3 (recipients should report residential locations served, as well as "businesses that they would expect to demand consumer-grade broadband service, which typically are small").

¹⁰ *Second Modernization Order* at ¶ 64 (finding that CAF recipients "remain free to charge reasonable special construction charges to schools and libraries, and those schools and libraries, in turn, will be able to receive support for those charges through the E-rate program" for construction that "is necessary to provide the additional capacity to the requesting school and library from existing fiber backhaul in the vicinity of the school or library: essentially, the incremental cost of a spur to serve the school or library").

¹¹ *Modernizing the E-rate Program for Schools and Libraries*, W.C. Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99, 29 FCC Rcd 8870, ¶ 34. (2014) ("*First Modernization Order*").

¹² Rural Broadband Auctions Task Force, "Connect America Fund Phase II Auction Results," FCC Open Meeting Presentation (Sept. 26, 2018), available at: <https://docs.fcc.gov/public/attachments/DOC-354278A1.pdf>.

¹³ *See Connect America Fund*, WC Docket No. 10-90, Public Notice, "Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018," DA 18-887 (Wireless Telecom. and Wir. Comp. Bureaus rel. August 28, 2018).



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much uncertainty surrounds whether and to what degree the associated facilities will pass any given school or library, or support the services they need.

For the above reasons, the State of Illinois respectfully urges the Commission to either permanently allow for special construction charges, or, in the alternative to extend the suspension of the amortization policy for an additional four years.

A handwritten signature in cursive script that reads "Emily Bastedo".

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cc:

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